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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/545,769	04/10/2000	William J Beyda	OOP7572US	2711
7590	04/05/2005		EXAMINER	
Siemens Corporation Intellectual Property Department 186 Wood Avenue South Iselin, NJ 08830				HOM, SHICK C
		ART UNIT		PAPER NUMBER
		2666		

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/545,769	BEYDA ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Shick C Hom	2666

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 November 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 6-8 is/are withdrawn from consideration.
- 5) Claim(s) 4,5,9 and 10 is/are allowed.
- 6) Claim(s) 11-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ .   | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 11/1/04 have been fully considered but they are not persuasive because the limitation that Quality of Service Ethernet layer being modular and wherein the QoS commands are generated or at a modular generate QoS Ethernet layer now recited in claims 11, 12, and 15 is anticipated by Ors et al. in col. 8 lines 45-52 which recite the use of standardized protocols such as the Ethernet switching protocol. The layer being modular merely refers to it being of a standardized design for flexible use and clearly the Ethernet layer of Ors is of a standardized design for flexible use.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colley et al. (6,650,644) in view of Ors et al. (6,731,639).

Regarding claim 11:

Colley et al. disclose the method comprising: intercepting a second byte from an Internet Protocol header from an IP layer; identifying from said second byte a quality of service required for individual calls (see col. 6 lines 1-30 which recite using the two QoS bytes of the IP header of the data packet clearly anticipate intercepting the byte from the IP header identifying the QoS); and generating corresponding Quality of Service

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commands to a Quality of Service layer to define a Quality of Service (see col. 7 lines 1-11 which recite translating the QoS including the step of generating the QoS lookup table for outputting the type of service TOS according to the translation entry clearly reads on generating corresponding QoS commands as now claimed).

Regarding claims 12 and 15:

Colley et al. disclose the system and method comprising: beginning an IP multimedia call (see col. 3 lines 16-22 which recite the inbound IP packet clearly reads on beginning an IP multimedia call); encapsulating corresponding messages for said IP multimedia call in IP protocol data packets; setting a second byte of an IP header at an IP layer for said IP protocol data packets; reading said second byte before said IP protocol data packets are sent over a network (see col. 6 lines 1-30 which recite using the two QoS bytes of the IP header of the data packet clearly anticipate intercepting the byte from the IP header identifying the QoS); accessing a lookup table, said lookup table containing entries for mapping said second byte to QoS quality of service commands; sending said QoS quality of service commands to a QoS layer; and sending said IP protocol data packets over a network using a quality of service as

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specified in said QoS quality of service commands at a layer (see col. 7 line 1 to col. 10 line 10 which recite translating the QoS including the step of generating the QoS lookup table for outputting the type of service TOS according to the translation entry clearly reads on accessing a lookup table and generating corresponding QoS commands as now claimed).

Regarding claims 13, 16:

Colley et al. disclose said second byte comprising a Type of Service byte (see col. 2 lines 3-11).

Regarding claims 14, 17:

Colley et al. disclose said second byte comprising a Differentiated Service byte (see col. 1 lines 44-55).

For claims 11-12 and 15, Colley et al. disclose all the subject matter of the claimed invention with the exception of the Ethernet layer; the Quality of Service Ethernet layer being modular and wherein said Quality of Service commands are generated at a modular Generate Quality of Service Ethernet layer.

Ors et al. from the same or similar fields of endeavor teach that it is known to provide the Ethernet layer; the Quality of Service Ethernet layer being modular and wherein said Quality of Service commands are generated at a modular Generate Quality of Service Ethernet layer (see col. 6 lines 21-38, col.

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8 lines 45-52 which recite the use of standardized protocols such as the Ethernet switching protocol, and col. 8 line 35 to col. 9 line 43 which recite encapsulating the IP packet generated by IP packet assembly unit into an Ethernet packet including the label for QoS requirement using Ethernet encapsulation). Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide the Ethernet layer; the Quality of Service Ethernet layer being modular and wherein said Quality of Service commands are generated at a modular Generate Quality of Service Ethernet layer as taught by Ors et al. in the system and method of Colley et al. The Ethernet layer; the Quality of Service Ethernet layer being modular and wherein said Quality of Service commands are generated at a modular Generate Quality of Service Ethernet layer can be implemented by using the Ethernet local area network LAN standard of Ors et al. in the system and method of Colley et al. The motivation for using the QoS layer defining an QoS at a layer being the QoS Ethernet layer as taught by Ors et al. in the method of Colley et al. being that it provides a more useful design and flexible design because it uses a well known local area network LAN standard, i.e. Ethernet, in the system and method of Colley et al.

**Allowable Subject Matter**

4. Claims 4, 5, 9, and 10 are allowed.

**Conclusion**

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

6. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick C Hom whose telephone number is 571-272-3173. The examiner can normally be reached on Monday to Friday with alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SH



DANG TON  
PRIMARY EXAMINER